

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

ANGELA SWORD LEWIS
THOMAS K. LEWIS

Chapter 7
Case No. 11-44385-wsd
Hon. Walter Shapero

Debtors.

TIMOTHY J. MILLER, TRUSTEE

AP#

Plaintiff

V

ANGELA SWORD LEWIS,
THOMAS K. LEWIS,
JIM SWORD, and
BLANCHE SWORD, jointly and severally,

Defendants.

COMPLAINT

The Chapter 7 Trustee, Timothy J. Miller, by his counsel, OSIPOV BIGELMAN, P.C., and for his Complaint, states as follows:

Jurisdiction

1. This is an adversary proceeding in bankruptcy brought by Plaintiff pursuant to Bankruptcy Rules 4004 and 7001(4), seeking to deny the discharge of Debtors/Defendants pursuant to 11 U.S.C. §§727(a)(4), 727(a)(5), and 727(a)(2). Additionally, this adversary proceeding is brought pursuant to Sections 549 and 550 of Title 11 of the United States Code ("Code") and Fed. R. Bankr. P. 7001 to avoid and recover transfers.

2. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(J) over which this court has jurisdiction pursuant to 28 U.S.C. §§1334 & 157(b)(1).

General Allegations

3. The Debtor filed for Chapter 7 Bankruptcy Protection on February 22, 2011.
4. Timothy J. Miller ("the Trustee" or "Plaintiff") is the duly appointed Chapter 7 Trustee in the Debtors' bankruptcy case.
5. The Debtors bankruptcy schedules contained numerous omissions, including, but not limited to:
 - A. Schedule B- Paragraph 18- The Debtors failed to schedule State and Federal Income Tax Refunds totaling \$9,978.00;
 - B. Schedule B- Upon information and belief, the Debtors failed to schedule all of their personal property, scheduling only \$4,301.00 of assets, when their retirement accounts and their vehicle are excluded, while attempting to discharge \$366,247.84 of unsecured debt;
 - C. Schedule F- The Debtors failed to schedule a debt owing to Jim and Blanche Sword, who are the parents of Angela Sword Lewis, and insiders as defined by Section 101 of the Bankruptcy Code.
 - D. Schedule I and J- Upon information and belief, the Debtors understated income and overstated expenses;
6. On March 30, 2011, the Debtors attended their First Meeting of Creditors.
7. At the First Meeting of Creditors, only after questioning by the Trustee did the Debtors finally disclose that they had received an income tax refund of approximately \$10,000.00 and that they had a cashier's check issued to their parents to repay the previously undisclosed and unscheduled debt to them.
8. On April 1, 2011, the Trustee filed a Report of Undisclosed Assets. See attached **Exhibit A**.
9. Upon information and belief, the Debtors transferred the proceeds from the income tax

refund to Jim and Blanche Sword.

10. On April 28, 2011, the Trustee requested the Debtors turnover the following documents:

- A. 2010 Income Taxes for both Debtors;
- B. Any and all documentation evidencing the disposition of Angela's 2010 Income Tax Refund. See attached **Exhibit B**.

The Debtors ignored this request in violation of their duties under Section 521 of the Bankruptcy Code.

11. On May 3, 2011, the Debtors' filed amended schedules claiming an exemption in the previously undisclosed income tax refund, and for the first time listing Jim and Blanche Sword as creditors.

Count I

Objection to Discharge-11 U.S.C. § 727(a)(4)(D)

12. Plaintiff incorporates by reference all prior paragraphs.

13. The Debtors have knowingly and fraudulently, in or in connection with this Chapter 7 bankruptcy filing, withheld recorded information including books, documents, records, and paper relating to the Debtors' property or financial affairs.

14. Specifically, the Debtors have failed to produce any of the aforementioned documents.

15. The Debtors' discharge should be denied pursuant to 11 U.S.C. § 727(a)(4)(D).

WHEREFORE, Trustee, Timothy J. Miller, respectfully requests an entry of a judgment denying the Debtors' discharge, granting reasonable attorney's fees and the costs of this action, and all other proper relief.

Count II

Objection to Discharge- 11 U.S.C. § 727(a)(4)(A)

16. Plaintiff incorporates by reference all prior paragraphs.

17. The Debtors knowingly and fraudulently, in or in connection with the case made a false oath or account.

18. The Debtors' discharge should be denied pursuant to 11 U.S.C. § 727(a)(2).

WHEREFORE, Trustee, Timothy J. Miller, respectfully requests an entry of a judgment denying

the Debtors' discharge, granting reasonable attorneys fees and the costs of this action, and all other proper relief.

Count III

Objection to Discharge- 11 U.S.C. § 727(a)(2)

19. Plaintiff incorporates by reference all prior paragraphs.

20. The Debtors, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred property of the estate after the date of filing the petition.

21. The Debtors' discharge should be denied pursuant to 11 U.S.C. § 727(a)(2).

WHEREFORE, Trustee, Timothy J. Miller, respectfully requests an entry of a judgment denying the Debtors' discharge, granting reasonable attorneys fees and the costs of this action, and all other proper relief.

Count IV

Objection to Discharge-11 U.S.C. § 727(a)(5)

22. Plaintiff incorporates by reference all prior paragraphs.

23. The Debtors have failed to explain satisfactorily, before determination of discharge under this paragraph, any loss of assets or deficiency of assets to meet her liabilities.

24. The Debtors have joint gross monthly income of \$10,432.53.

25. The Debtors have had this income for a substantial period of time.

26. The Debtors scheduled only \$4,301.00 of assets, when their retirement accounts and their vehicle are excluded, while attempting to discharge \$366,247.84 of unsecured debt.

27. The Debtors discharge should be denied pursuant to 11 U.S.C. § 727(a)(5).

WHEREFORE, the Debtors' discharge should be denied pursuant to 11 U.S.C. § 727(a)(5).

Count V

Avoidance of Post-Petition Transfer Pursuant to 11 U.S.C. §§549 and 550

28. Plaintiff incorporates by reference all prior paragraphs.

29. Upon information and belief, the Debtors transferred \$9,978.00 to Jim and Blanche

Sword after the commencement of their bankruptcy case.

30. This transfer was not authorized by the Court or the Bankruptcy Code.

31. This transfer is avoidable and recoverable from Jim and Blanche Sword by the Trustee pursuant 11 U.S.C. §§549 and 550.

WHEREFORE, the Trustee prays that this Court enter a judgment in his favor and against Jim and Blanche Sword, jointly and severally, an amount not less than \$9,978.00 plus interest, costs, and attorney's fees, and granting such other and further relief as may be appropriate and just.

Respectfully submitted,

OSIPOV BIGELMAN, P.C.

Date: May 31, 2011

/s/ Jeffrey H. Bigelman
JEFFREY H. BIGELMAN (P61755)
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In the Matter of:

**ANGELA SWORD LEWIS and,
THOMAS K. LEWIS,**

Debtors.

In Bankruptcy

Chapter 7
Case No. 11-44385-WSD

Hon. Walter Shapero

Trustee's Report of Undisclosed Assets

Pursuant to E.D. Mich. LBR 2015, the Trustee hereby reports that the Trustee discovered the following assets after the Debtors testified at the meeting of creditors that their schedules are accurate:

Income tax refunds for the year 2010 in the amount of approximately \$10,000.00. Debtors indicated an intent to file amended schedules.

This report is for informational purposes only. No response is permitted.

Dated: April 1, 2011

/s/Timothy J. Miller

Timothy J. Miller, Trustee (P36951)
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April 28, 2011



Dale L. Smith
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**Re: In re Angela & Thomas Lewis
Case No. 11-44385-wsd**

Mr. Smith,

Please be advised that my office, OSIPOV BIGELMAN, P.C., has been retained by the Chapter 7 Trustee, Timothy J. Miller, in connection with the above-referenced case.

Pursuant to the Debtor's bankruptcy schedules and their testimony at the 341 Hearing, Angela Lewis (aka Angela Sword) expects and/or has received a considerable tax refund from her individual 2010 Income Tax returns. Upon information and belief, this refund totals some \$10,000.00 which was not disclosed in the bankruptcy schedules as soon as possible, but not later than fifteen (15) days from the date of this letter, for further review:

- 2010 Income Taxes for both Debtors
- Any and all documentation evidencing the disposition of Angela's 2010 Income Tax Refund

Thank you for your anticipated cooperation.

Sincerely,

OSIPOV BIGELMAN, P.C.

Jeffrey H. Bigelman, Esq.

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COVER

SHEET

FAX

To: DALE SMITH

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From: MATT ZIMJEWSKI

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Date: 5/2/11

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COMMENTS

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